IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH NOVEMBER 2007 / 15TH KARTHIKA 1929

Bail Appl..No. 6726 of 2007()

CRIME NO. 299/07 OF FEROKE POLICE STATION

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PETITIONERS/ACCUSED NO.1 TO 6

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1. MUHAMMED IQBAL, S/O MUHAMMED HAJI,
   ALATHOORPADI, MELMURI, MALAPPURAM DISTRICT.

2. PALLIYALI PEEDIYEKKAL ABDUL SHUKOOR,
   S/O IBRAHIM, MELMURI,
   MALAPPURAM DISTRICT.

3. CHALAKKATHODI NIZAMUDDIN,
   S/O HAMZA, MELMURI, MALAPPURAM DISTRICT.

4. NATTUKALLINGAL SHIHABUDDIN,
   S/O ABOOBACKER, MELMURI,
   MALAPPURAM DISTRICT.

5. PULLIYIL ABDUL WAHAB,
   S/O MUHAMMED ALI, MELMURI, MALAPPURAM DISTRICT.

6. NANATH HAMZA,
   S/O MUHAMMED ALI, MELMURI, MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: STATE

THE STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
FEROKE POLICE STATION - THOURGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 06/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6726 of 2007

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Dated this the 6th day of November, 2007

O R D E R

Application for regular bail. The petitioners are accused 1 to 6 in a crime for offences punishable, inter alia, under Section 365 r/w. 149 I.P.C. The alleged incident took place on 19.10.2007.

2. The crux of the allegations is that the accused persons, seven in number including the petitioners, had allegedly attempted to abduct the defacto complainant, a young woman, while she, along with her brother, was shopping in a mobile telephone shop. Her hand was caught and she was dragged. A hue and cry was raised. The local people assembled. Then the miscreants withdrew. The local people advised the defacto complainant and her brother to complain to the police. They proceeded to the police station in an autorikshaw. Enroute the miscreants, who again came in a Qualis vehicle, stopped the autorikshaw and allegedly repeated the offence of abducting her,

her brother and the autorikshaw driver. When they resisted, they were assaulted again. Local people assembled and the miscreants retreated in the Qualis vehicle. The victims - the defacto complainant, her brother and the autorikshaw driver - proceeded to the police station in the same autorikshaw, which has also suffered damage. F.I.R. was registered. Investigation is in progress. The Qualis vehicle and the accused were later taken into custody. They were arrested and they continue in custody from 20.10.2007.

3. The learned counsel for the petitioners submits that the allegations are totally false and fabricated. It is nothing but the imagination of the local Sub Inspector. What really transpired has not been revealed to the court and is not expressed in the documents prepared. What really transpired was that the 7th accused, who happens to be the brother-in-law of the 4th accused, had deserted the sister of 4th accused and was having an affair with the defacto complainant. He was allegedly residing with the defacto complainant. His whereabouts were not known for some time and accused 1 to 6, who were friends

and relatives, were enquiring about the 7th accused. They came to know that the 7th accused is cohabiting with the defacto complainant. They went to the place of the defacto complainant and the 7th accused. They raised objection against their adulterous life. A hue and cry developed. The police came to the scene. All of them were taken to the police station and thereafter fanciful allegations are being raised. In these circumstances, the learned counsel for the petitioners prays that the petitioners may be granted regular bail.

4. The theory advanced by the prosecution has several loose ends. In view of the nature of the allegations raised by the police and the stand taken by the accused, the learned Prosecutor was requested to go through the case diary in detail and make his submissions. The case diary has been made available for my perusal also. The following circumstances appear to be crucial.

(1) The shop keeper , where the defacto complainant and her brother initially went for shopping for a mobile phone is not examined by the Investigating Officer.

(2) The wound certificates, which would show the alleged injury suffered by the brother of the defacto complainant and the autorikshaw driver are not available in the case diary.

(3) It is stated that the autorikshaw had suffered damage. No mahazar of the autorikshaw describing the damage is seen available.

(4) The confession of the seven accused persons are not seen recorded in the case diary at all.

(5) The prosecution has not come out with any tangible explanation as to what the motive of the accused persons was.

5. The totality of the circumstances does arouse in my mind dissatisfaction about the nature of the allegations raised against the petitioners. I am certainly of the opinion that a superior official must consider the nature of the allegations and their acceptability. Further investigation must certainly be entrusted to a superior official, who must consider the explanations offered by the accused in greater detail. I shall not be more explicit about the disputes now. Suffice it to say

that I perceive the need for investigating the case by a superior official.

6. The learned Prosecutor does not oppose the application. In the facts and circumstances of the case, I am certainly inclined to agree that the petitioners are entitled for regular bail now, subject to appropriate conditions.

7. In the result:

1) This application is allowed.

2) The petitioners shall be released on bail on the following terms and conditions.

(a) The petitioners shall execute bonds for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to be satisfaction of the learned Magistrate.

(b) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 12 noon on all Mondays and Fridays for a period of two months from the date of their release and thereafter as and when directed by the Investigating Officer in writing to do so.

© Hand over a copy to the learned Prosecutor, who shall forthwith communicate the order to the City Police Commissioner, Calicut City, who shall take necessary action to entrust the investigation to a superior officer.

(R. BASANT)
Judge

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